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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Contributions of the right to health framework to the effective implementation and achievement of the health-related Sustainable Development Goals

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, submitted pursuant to Human Rights Council resolution 35/23, the United Nations High Commissioner for Human Rights discusses the contributions of the right to health framework to the effective implementation and achievement of the health-related Sustainable Development Goals. He recalls the human rights underpinnings of the 2030 Agenda for Sustainable Development, and the close linkages between the right to health and the health-related Goals. In the report, he highlights the fact that the international standards on the right to health provide normative guidance in addressing several challenges relating to the implementation of the health-related Goals, such as aligning law and policy with human rights, operationalizing the pledge to leave no one behind, accountability and participation. The report also contains several examples of emerging good practices in applying the right to health framework.

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Contents

		Page
I.	Introduction	3
II.	The right to health in international human rights law	3
III.	The 2030 Agenda for Sustainable Development and the right to health	5
	A. Human rights underpinnings of the Sustainable Development Goals	5
	B. Health in the Sustainable Development Goals	5
IV.	Applying the right to health framework in implementing the health-related Sustainable Development Goals	6
	A. Normative guidance	6
	B. Addressing key challenges	7
V.	Emerging good practices	14
VI.	Conclusion	16

I. Introduction

1. The present report has been prepared pursuant to Human Rights Council resolution 35/23, in which the Council requested the United Nations High Commissioner for Human Rights to prepare a report that presents contributions of the right to health framework to the effective implementation and achievement of the health-related Sustainable Development Goals, identifying best practices, challenges and obstacles thereto, and to submit it to the Council at its thirty-eighth session.

2. In preparing the report, the Office of the United Nations High Commissioner for Human Rights (OHCHR) consulted and took into account the views of a range of stakeholders, as the Council encouraged it to do. A total of 49 contributions were received from Member States, United Nations bodies, human rights treaty bodies, special procedure mandate holders, national human rights institutions, academia and civil society organizations. All submissions are available on the OHCHR website.[1]

II. The right to health in international human rights law

3. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a fundamental right that is indivisible from, and interdependent and interrelated with, all other human rights. It is recognized in human rights instruments adopted at both the global and the regional levels, including in article 25 (1) of the Universal Declaration of Human Rights and article 12 of the International Covenant on Economic, Social and Cultural Rights. The right to health is also enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.[2]

4. This section highlights key aspects of the normative right to health framework that has been prepared by international human rights mechanisms. The general comments of the Committee on Economic, Social and Cultural Rights and other treaty bodies provide authoritative guidance on the normative content of the right and on the scope of State obligations, including priority interventions towards the progressive realization of the right.

5. In paragraph 11 of its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights interprets the right to health as an inclusive right, encompassing both the underlying determinants of health and access to timely and appropriate health care. The right to health contains both freedoms, such as the right to control one's health and body and the right to be free from interference, and entitlements, such as the right to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable level of health.[3] Regarding sexual and reproductive health in particular, freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, about matters concerning one's body and sexual and reproductive health and rights. Entitlements, on the other hand, include unhindered access to a range of health facilities, goods, services and information, which ensure all persons full enjoyment of the right to sexual and reproductive health.[4]

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[1] See www.ohchr.org/EN/Issues/ESCR/Pages/HealthFramework.aspx.

[2] Regional instruments recognizing the right to health include: the African Charter on Human and Peoples' Rights; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; and the European Social Charter.

[3] See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 8.

[4] See Committee on Economic, Social and Cultural Rights, general comment No. 22 (2016) on the right to sexual and reproductive health, para. 5.

6. The following interrelated and essential elements are part of the normative content of the right to health:[5]

(a) Availability, which requires functioning public health and health-care facilities, goods and services to be available in sufficient quantity within the State;

(b) Accessibility, which requires health facilities, goods and services to be affordable and physically accessible to all on the basis of non-discrimination;

(c) Acceptability, which requires health facilities, goods and services to be gender-sensitive, culturally, scientifically and medically appropriate and respectful of medical ethics;

(d) Quality, which requires health facilities, goods and services to be scientifically and medically appropriate.

7. The right to informed consent is a fundamental dimension of the right to physical and mental health. It protects the right of the patient to be involved voluntarily and sufficiently in medical decision-making, and assigns associated duties and obligations to health-care providers. Important components of informed consent include: (a) respect for legal capacity, generally determined by the ability to comprehend, retain, believe and evaluate information provided in arriving at a decision; (b) respect for personal autonomy, without coercion, undue influence or misrepresentation; and (c) completeness of information, including associated benefits, risks and alternatives to a medical procedure.[6]

8. The human rights-based approach arising from these norms also requires that health authorities and other duty bearers be held accountable for meeting human rights obligations in public health, including through the possibility for rights holders to seek effective remedies when their right to health is violated, through effective judicial complaints mechanisms or other appropriate avenues for redress. States have an obligation to ensure the meaningful participation of all stakeholders in the development, implementation and monitoring of health policy.

9. The International Covenant on Economic, Social and Cultural Rights provides for the progressive realization of the right to health and other economic, social and cultural rights. At the same time, it also imposes on States parties various obligations that have immediate effect, such as guaranteeing the exercise of the right without discrimination, and taking deliberate, concrete and targeted measures to move as expeditiously and effectively as possible towards the full realization of the right, using the maximum available resources. States parties have core obligations to ensure the satisfaction, at the very least, of a minimum essential level of the right, including: (a) ensuring access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; (b) ensuring access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water; (c) providing essential drugs, as defined in the World Health Organization (WHO) Model List of Essential Medicines; (d) ensuring the equitable distribution of all health facilities, goods and services; and (e) adopting and implementing a national public health strategy and plan of action.[7] Additional obligations of comparable priority include ensuring reproductive, maternal and child health care, and providing immunization against the major infectious diseases occurring in the community, education and access to health information and training for health personnel, including education on health and human rights.[8]

[5] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 12.

[6] See A/64/272, sects. II–III.

[7] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 43.

[8] Ibid., para. 44.

III. The 2030 Agenda for Sustainable Development and the right to health

A. Human rights underpinnings of the Sustainable Development Goals

10. The 2030 Agenda for Sustainable Development is grounded in the Universal Declaration of Human Rights, international human rights treaties and other instruments.[9] As a result, the Sustainable Development Goals seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls.[10] In addition to reaffirming the importance of the Universal Declaration of Human Rights and other international instruments relating to human rights and international law, States also underscore their responsibility, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.[11] The pledges to leave no one behind and to endeavour to reach the furthest behind first evoke the key human rights principles of equality, non-discrimination and inclusion.[12]

11. While the Sustainable Development Goals themselves are not framed explicitly in the language of human rights, virtually all of the Goals explicitly reflect the contents of corresponding key economic, social and cultural rights. Many of the targets under the Goals address availability, accessibility, including economic accessibility (affordability), and quality of education, health, water and other services related to those rights, with targets on access to safe, nutritious and sufficient food for all, universal health coverage, free, equitable and quality primary and secondary education, access to safe and affordable water, sanitation, hygiene and housing and access to safe, effective, quality and affordable essential medicines and vaccines for all.[13]

12. The 2030 Agenda reaffirms human rights for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.[14] It also pays particular attention to women and girls, and to those in situations of vulnerability, such as children, youth, persons with disabilities, persons living with HIV/AIDS, older persons, indigenous peoples, refugees and internally displaced persons and migrants.[15]

B. Health in the Sustainable Development Goals

13. As stated by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, health is central to the Sustainable Development Goals, as it is both an outcome of and a path to achieving poverty reduction and sustainable development. Progress in health is both dependent on and a consequence of progress towards other Goals.[16] The supremely ambitious and transformational vision envisaged by the 2030 Agenda is of a world with equitable and universal access to quality education at all levels, to health care and social protection, where physical, mental and social well-being are assured.[17]

14. While the right to health is intrinsically connected to several Goals and targets, Goal 3, on ensuring healthy lives and promoting well-being for all at all ages, is the principal

[9] See General Assembly resolution 70/1, para. 10.
[10] Ibid., third preambular paragraph.
[11] Ibid., para. 19.
[12] Ibid., para. 4.
[13] See A/HRC/34/25, paras. 8 and 10.
[14] See General Assembly resolution 70/1, para. 19.
[15] Ibid., para. 23.
[16] See A/71/304, para. 6.
[17] See General Assembly resolution 70/1, para. 7.

health-related Goal, and its targets cover a broad range of health concerns. These targets address: (a) maternal mortality (target 3.1); (b) preventable deaths of newborns and children under 5 years of age (target 3.2); (c) AIDS, tuberculosis, malaria and neglected tropical diseases, hepatitis, waterborne diseases and other communicable diseases (target 3.3); (d) premature mortality from non-communicable diseases, mental health and well-being (target 3.4); (e) the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol (target 3.5); (f) road traffic accidents (target 3.6); (g) universal access to sexual and reproductive health-care services, and the integration of reproductive health into national strategies and programmes (target 3.7); (h) universal health coverage, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all (target 3.8); and (i) deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination (target 3.9).

15. Goal 3 targets also aim to: strengthen the implementation of the WHO Framework Convention on Tobacco Control in all countries (target 3.a); support the research and development of vaccines and medicines for the communicable and non-communicable diseases that primarily affect developing countries and provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health (target 3.b); substantially increase health financing and the recruitment, development, training and retention of the health workforce in developing countries, especially in least developed countries and small island developing States (target 3.c); and strengthen the capacity of all countries, in particular developing countries, for early warning, risk reduction and management of national and global health risks (target 3.d).

16. Many of the targets deal with elements that resonate and are consistent with human rights norms and standards. For example, target 3.3 recalls the prevention, treatment and control of epidemic, endemic, occupational and other diseases envisaged in article 12 (2) (c) of the International Covenant on Economic, Social and Cultural Rights, with control including the making available of relevant technologies, the use and improvement of epidemiological surveillance and data collection on a disaggregated basis and the implementation or enhancement of immunization programmes and other strategies of infectious disease control.[18] Under article 12 (2) (d) of the Covenant, universal health coverage, considered in greater detail below, entails the creation of conditions that would assure to all medical service and medical attention in the event of sickness. Access to medicines, covered in target 3.b, evokes one of the core obligations under the right to health. The human rights framework, particularly on the right to health, can positively contribute to the realization of the 2030 Agenda. The following section will consider how the right to health framework can contribute to the achievement of the Sustainable Development Goals.

IV. Applying the right to health framework in implementing the health-related Sustainable Development Goals

A. Normative guidance

17. One of the key cross-cutting commitments of the 2030 Agenda is that its implementation should be in accordance with the rights and obligations of States under international law,[19] including human rights norms and standards. States therefore have an imperative to integrate the key human rights principles and international norms and standards arising from the right to health into the framing and implementation of laws, policies and practices, in order to achieve the health-related Sustainable Development Goals.

18. The High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents, co-convened in May 2016 by OHCHR and WHO to secure

[18] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 16.

[19] See General Assembly resolution 70/1, para. 18.

political support for the implementation of the human rights-related measures required by the Global Strategy for Women's, Children's and Adolescents' Health (2016–2030), indicated that a human rights-based approach was essential for the following reasons: (a) it supports States in meeting their obligations under international human rights law; (b) it offers a principled basis for universal access to health services, emphasizing that interventions must be non-discriminatory, transparent and participatory, and founded on strong public accountability; (c) it requires focus on both the empowerment of rights holders and the responsibilities of duty bearers; (d) it aims to enhance the capacity of duty bearers at the local, district and national levels to meet their obligations to respect, protect and fulfil human rights in transparent, effective and accountable ways; (e) it requires full and informed participation by all those affected by any action or policy; and (f) it builds true sustainability into health systems and towards improving health outcomes by requiring that the underlying determinants of health be tackled, including through the realization of health-enabling rights.[20]

19. The Special Rapporteur on extreme poverty and human rights observed that human rights provided a context and a detailed and balanced framework that: invoked the specific legal obligations that States had agreed upon in the various human rights treaties; emphasized that certain values were non-negotiable; brought a degree of normative certainty; and brought into the discussion the carefully negotiated elaborations of the meaning of specific rights that had emerged from decades of reflection, discussion and adjudication.[21] Crucially, in view of the people-centred underpinnings of the 2030 Agenda, the language of rights recognizes the dignity and agency of all individuals (regardless of race, gender, social status, age, disability or any other distinguishing factor) and it is intentionally empowering.[22] This is particularly true for the right to health.

B. Addressing key challenges

20. The following section contains a consideration of a selection of key challenges connected with the effective implementation and achievement of the health-related Sustainable Development Goals, and the contribution of the right to health framework in addressing them.

1. Realizing health and health-related rights

21. The realization of the right to health is dependent on the exercise, without discrimination, of other human rights, be they civil, political, economic, social or cultural. When the right to health is protected, the enhanced enjoyment of other rights necessary to preserve dignity, realize potential and assert autonomy becomes possible.[23] However, while the right to health framework is well established, health policymakers often miss the opportunity to integrate human rights principles, norms and standards into policy development, implementation and monitoring, as well as into mechanisms for accountability, which would improve process and policy outcomes for rights holders. The Special Rapporteur on health refers, in this regard, to an implementation gap, noting that while the fundamental principles and the main processes and mechanisms of the right to health are well identified, there still remains a significant gap between the formulation of health policies and their effective implementation in everyday practice. This is so even where the formulation of health policy is satisfactory from a human rights standpoint.[24] A number of factors account for this implementation gap, and some of the most significant include: a growing trend that favours a narrow and selective approach to human rights that

[20] More information in this regard is available from www.ohchr.org/EN/Issues/Women/WRGS/Pages/MaternalAndChildHealth.aspx.

[21] See A/70/274, para. 65.

[22] Ibid.

[23] World Health Organization (WHO), *Leading the realization of human rights to health and through health: Report of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents* (2017), p. 10.

[24] See A/HRC/29/33, para. 40.

ignores or insufficiently addresses one or more rights, including the right to health, of a group of the population; a failure to address human rights as determinants of health; and a tendency towards policy fragmentation across areas that affect health.[25] Applying the principle of the interdependence and indivisibility of all human rights is therefore essential for the full realization of the right to health.[26]

22. Strong and committed leadership, including at the highest levels, is indispensable if effect is to be given to the changes necessary to integrate human rights into public health on a sustainable basis. Such leadership is crucial for rectifying the "pathologies of power": the power imbalances that are often at the root of poor health outcomes for persons in disadvantaged and vulnerable situations.[27] These power differentials cut across relations between government and governed, communities and established authorities, health personnel and the persons they serve, and those who determine social, cultural, religious and other norms and practices and those who are, effectively, compelled to abide by them even to their detriment. Without committed leadership and effective participation, negative power dynamics are likely to continue to undermine the enjoyment of the right to health.[28] Dedicated leadership would oversee the implementation of a coordinated approach to health policy in a whole-of-government push to engage other sectors whose policy has an impact on health, examples being the education, trade, water and sanitation, nutrition and transport sectors.[29] This coordinated approach would have, as a key goal, the realization of "the whole nexus of intersecting, interdependent rights".[30]

2. Aligning law and policy with human rights

23. A legal and policy framework anchored in human rights norms is crucial to ensuring the effective implementation of the Sustainable Development Goals relating to the full realization of human rights, including the right to health. In the last decade, there have been significant setbacks regarding the realization of the right to health and human rights in general. The Special Rapporteur on health expressed concern that the effects of the tendency to adopt a selective approach to human rights are most detrimental for groups that are already experiencing discrimination and that are often unable to access health services, with the result that poverty, social exclusion, inequalities and discrimination are reinforced and health suffers.[31] Other negative trends impacting the right to health include rising inequalities, which have seen indigenous peoples, minorities, persons with disabilities and other populations and groups in vulnerable situations face barriers to access to essential services.

24. In the area of sexual and reproductive health and rights, restrictive laws and policies in some countries threaten the gains that have been made so far, particularly in preventable maternal and child mortality. The use of penal laws to hinder access to maternal health services, and to criminalize entire population groups, such as lesbian, gay, bisexual, transgender and intersex persons, sex workers and persons who use drugs, contributes to stigma and discrimination. Its correlation with poor health outcomes of those groups is well documented.

25. In tandem with the protection of the right to health in national law and the adoption of a national health policy, the right to health framework requires that States adopt legislative, administrative, budgetary, judicial, promotional and other measures towards the

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[25] Ibid., para. 42.

[26] Ibid., para. 43.

[27] Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (University of California Press, 2004).

[28] Alicia Ely Yamin and Rebecca Cantor, "Between insurrectional discourse and operational guidance: challenges and dilemmas in implementing human rights-based approaches to health", Journal of Human Rights Practice, vol. 6, No. 3 (November 2014), p. 463.

[29] WHO, *Leading the realization of human rights to health and through health: Report of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents* (2017), p. 35.

[30] Ibid., p. 11.

[31] See A/HRC/29/33, paras. 42 and 44–45.

full realization of the right to health.[32] Interventions towards these objectives include a comprehensive assessment of the extent to which existing legal and policy frameworks comply with the human rights norms applicable to health and well-being, through a participatory, inclusive and transparent process, with stakeholder consultation throughout. Such an assessment could be followed by measures to: (a) repeal, rescind or amend laws and policies to align them with human rights norms; (b) enact laws and implement policies promoting positive measures to ensure that essential health services, including primary health-care, sexual and reproductive health services, maternal health services, and neonatal, child and adolescent health services, are available, accessible, acceptable and of good quality;[33] and (c) ensure accountability, as more fully set out below.

3. Operationalizing the pledge to leave no one behind

26. The central promise of the 2030 Agenda to leave no one behind and to reach the furthest behind first effectively mirrors the human rights principle of equality and non-discrimination. In the section below, the High Commissioner explores the challenges in operationalizing this commitment, viewed from the perspective of women's rights, as well as in the two specific areas of neglected health concerns and universal health coverage. The pledge to leave no one behind should be reflected in all policy areas, including accountability and participation.

(a) Women and girls

27. The 2030 Agenda aspires to a world in which every woman and girl enjoys full gender equality and all legal, social and economic barriers to their empowerment have been removed. Achieving gender equality will contribute significantly to the achievement of the Sustainable Development Goals as a whole. Goal 5 explicitly calls on all States to empower all women and girls and achieve gender equality by 2030. Equality between men and women is protected by several human rights instruments and is a cornerstone of human rights law.[34] Nevertheless, the denial of the health and health-related rights of women and girls remains widespread, as a result of discrimination, exclusion and traditional, cultural, social and other norms and practices that place women and girls in positions of inferiority or subordination in the home, the community, the workplace and broader society. Cumulative and intergenerational impacts of gender-based discrimination and inequality have grave consequences for the health outcomes of half of the world's population.[35]

28. Other obstacles to the realization of the right to health of women and girls include legal, procedural, practical and social barriers to access to the full range of sexual and reproductive health facilities, services, goods and information.[36] Harmful gender stereotypes and practices, such as child and forced marriage, female genital mutilation, the preferential care of boys and violence against women also contribute to poor health outcomes.[37] Unequal access to quality education and employment limits the opportunities available to girls and women to ensure their agency. The lack of financial independence and, in particular, of agency, frequently means that women and girls are unable to access good quality health services that also meet the criteria regarding acceptability, especially gender sensitivity: a vital element concerning their ability to exercise their sexual, reproductive and other health rights.

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[32] See Committee on Economic, Social and Cultural Rights, general comment No. 14, paras. 33 and 36.

[33] Jyoti Sanghera and others, "Human rights in the new Global Strategy", British Medical Journal, vol. 351, supplement 1 (September 2015), pp. 42–43.

[34] See International Covenant on Civil and Political Rights, art. 3; International Covenant on Economic, Social and Cultural Rights, art. 3; and Convention on the Elimination of All Forms of Discrimination against Women, arts. 1–2.

[35] In its report entitled *Leading the Realization of Human Rights to Health and through Health*, the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents notes that "preventable death, ill-health and impairment are firmly rooted in the failure to protect human rights" (p. 7).

[36] See Committee on Economic, Social and Cultural Rights, general comment No. 22, para. 2.

[37] See www.ohchr.org/Documents/Publications/FactSheet23en.pdf.

29. As well as requiring that States take all appropriate measures to eliminate discrimination against women in the field of health care, in order to ensure, on the basis of equality of men and women, access to health-care services, the right to health framework calls for attention to be paid to the underlying determinants of women's health.[38] Interventions to prevent and treat diseases and conditions affecting women, and to respond to gender-based violence should be part of a national strategy to promote health throughout the course of life. The health needs and rights of women belonging to vulnerable and marginalized groups, such as migrant women, refugee and internally displaced women, older women, indigenous women and women with disabilities, should receive special attention.[39] As recommended by the Committee on the Elimination of Discrimination against Women, States should: (a) monitor the provision of health services to women by public, non-governmental and private organizations, to ensure equal access and quality of care; (b) require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice; and (c) ensure comprehensive, mandatory, gender-sensitive training on women's health and human rights for health workers.[40]

(b) Addressing neglected health concerns: mental health

30. The right to health encompasses both physical and mental health, without placing preferential value on either one. Yet, despite mental health conditions affecting one in four persons over their lives, persons affected by mental health conditions experience social and other forms of exclusion on a broad scale, and mental health remains marginalized in many ways.[41] The stigma and discrimination to which many persons with mental health conditions are subjected, in the community, in other social environments and contexts and in health-care settings, discourage them from seeking the health care and services they need. A frequently isolating experience, living with mental health conditions is commonly typified by the denial of many other rights, such as the rights to work, to education, to an adequate standard of living and to housing. Forced treatment and other harmful practices within mental health institutions, such as solitary confinement, forced sterilization, the use of restraints, forced medication and overmedication, not only violate the right to free and informed consent provided for by the Convention on the Rights of Persons with Disabilities, but constitute ill-treatment that may amount to torture.[42] Marginalization of mental health is a significant challenge: there are data and research gaps, especially with regard to the human rights situation of persons with mental health conditions, and financial and human resource allocations for mental health are all symptomatic of the lesser value routinely ascribed to mental health.[43]

31. As the above outline endeavours to demonstrate, the marginalization of certain health concerns inevitably brings about the marginalization of affected persons. A core obligation under the right to health is the duty to adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population.[44] A participatory and transparent process, incorporating periodic reviews, should be employed in the development of the strategy and plan, and special attention accorded to all vulnerable or marginalized groups. The neglect of these issues in health and other relevant policy, and of the persons affected by them, signals certain serious shortcomings in ensuring the availability, accessibility, acceptability and quality of health services, facilities and goods, and in upholding accountability and the right

[38] See Convention on the Elimination of All Forms of Discrimination against Women, art. 12 (1); Committee on the Elimination of Discrimination against Women, general recommendation No. 24 (1999) on women and health, para. 6.

[39] See Committee on the Elimination of Discrimination against Women, general recommendation No. 24, paras. 6 and 29.

[40] Ibid., para. 31 (d), (e) and (f).

[41] See www.who.int/mental_health/maternal-child/child_adolescent/en/; and submission of International Disability and Development Consortium, pp. 2–3.

[42] See A/HRC/34/32, para. 33.

[43] Ibid., paras. 19 and 21.

[44] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 43 (f).

to participation. Reaching first those who are furthest behind and leaving no one behind calls for their equal prioritization along with other health concerns relevant to the population as a whole.

(c) Universal health coverage

32. The 2030 Agenda endorses a commitment to achieve universal health coverage for all, which remains an important challenge. According to the International Labour Organization (ILO), 46.3 per cent of the global population and 56 per cent of the global rural population lack health coverage. Approximately 48 per cent of the population, and more than half of older persons worldwide, have no access to long-term care as a result of insufficient numbers of the skilled workers needed for service delivery.[45] Largely ignored in health policy, long-term care is widely perceived as free care, to be provided by unpaid female family members. However, such unpaid care does have economic implications, such as loss of income opportunities and the resulting risk of impoverishment.[46]

33. There is a broad diversity of views regarding what universal health coverage entails, and the traditional role played by the private sector in voluntary insurance schemes has been very influential in the conception of health coverage in general. Although target 3.8 of the Sustainable Development Goals refers to financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all, universal health coverage is not defined in the 2030 Agenda, nor is there any mention of the need to prioritize marginalized and vulnerable populations and groups, such as those living in poverty.[47]

34. In the absence of a clear definition of universal health coverage in the Sustainable Development Goals, the international human rights framework and the right to health framework can provide guidance and standards to improve health outcomes for all people, without discrimination. The Special Rapporteur on health cautions that not all paths to universal health coverage are consistent with human rights standards, noting in particular the risk of entrenching inequalities where, for instance, Governments prioritize the expansion of coverage to privileged groups in the formal sector.[48] A human rights-based approach to universal health coverage, recommended by the High-Level Working Group on Health and Human Rights,[49] fundamentally requires that availability, accessibility, acceptability and quality be ensured, and that persons in vulnerable situations who are mostly excluded from universal health coverage be prioritized. A human rights-based approach to universal health coverage calls, among other requirements, for the creation of conditions that would ensure to every person all appropriate medical service and medical attention in the event of need,[50] universal coverage of quality primary health services for children[51] and the elimination of discrimination in health care and services, especially in relation to the core obligations of the right to health.[52] Thus, universal health coverage refers not merely to an expansion of coverage for health services but also to access, for every person throughout the course of life, to the full complement of necessary and appropriate health care and services on the basis of non-discrimination.[53]

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[45] International Labour Organization (ILO), *World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals* (2017), pp. 104–109.

[46] Ibid., p. 108.

[47] See A/71/304, para. 76.

[48] Ibid.

[49] WHO, *Leading the realization of human rights to health and through health: Report of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents* (2017), p. 34, recommendation 2.

[50] See International Covenant on Economic, Social and Cultural Rights, art. 12 (2) (d).

[51] See Committee on the Rights of the Child, general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 73 (b).

[52] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 19.

[53] WHO, *Leading the realization of human rights to health and through health: Report of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents* (2017), p. 15.

35. The human rights framework helps to further clarify the responsibilities of States regarding universal health coverage to: (a) ensure the participation of stakeholders in the design of policies to implement universal health coverage;[54] (b) refrain from inappropriate health resource allocation that would disproportionately favour expensive curative health services, which are often accessible only to a small, privileged fraction of the population, over primary and preventive health care benefiting a far larger part of the population; (c) adopt legislative and other measures ensuring equal access to health care and health-related services provided by third parties;[55] (d) ensure that availability, accessibility, acceptability and quality of health facilities, goods and services are not undermined by health sector privatization;[56] and (e) uphold and implement the right to social security, including the implementation of social protection floors, as part of measures to ensure financial risk protection.[57]

4. Accountability for health

36. In the 2030 Agenda, the General Assembly foresees a robust, voluntary, effective, participatory, transparent and integrated follow-up and review framework to support national implementation and to maximize and track progress to ensure that no one is left behind. It aims to promote accountability, support effective international cooperation and foster the exchange of best practices and mutual learning.[58] A global indicator framework, including for the health-related Goals, has since been developed by the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, endorsed by the Statistical Commission and adopted by the General Assembly.[59] It is to be complemented by indicators at the regional and national levels. OHCHR has underscored the need for a robust accountability mechanism at the global level under the high-level political forum on sustainable development, and for the forum's voluntary national reviews and thematic reviews to draw systematically on information and recommendations from the United Nations human rights mechanisms. Moreover, as recognized in the 2030 Agenda, accountability in the private sector should be ensured based on the Guiding Principles on Business and Human Rights.[60]

37. Accountability is a complex, multidimensional concept. Human rights-based accountability requires numerous forms of review and oversight and fostering of the accountability of multiple actors at various levels, both within and beyond the health sector.[61] Accountability comprises at least three fundamental components: monitoring, independent review and remedial action.[62] Effective monitoring is critical, not as an end in itself, but as a tool for measuring progress and improving accountability. Each of these components is indispensable and has a discrete role to play in strengthening accountability.[63]

38. Challenges around ensuring accountability for health include the failure to differentiate between these components, with the result that one or more may be neglected,

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[54] Submission by Health Poverty Action, p. 4.

[55] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 35.

[56] Ibid.

[57] See International Covenant on Economic, Social and Cultural Rights, art. 9; ILO Social Security (Minimum Standards) Convention, 1952 (No. 102); ILO Social Protection Floors Recommendation, 2012 (No. 202); ILO Medical Care Recommendation, 1944 (No. 69); and ILO Medical Care and Sickness Benefits Convention, 1969 (No. 130).

[58] See General Assembly resolution 70/1, paras. 72–73.

[59] General Assembly resolution 71/313.

[60] See General Assembly resolution 70/1, para. 67.

[61] See A/HRC/21/22, paras. 74–75.

[62] Commission on Information and Accountability for Women's and Children's Health, "Keeping promises, measuring results", p. 7; Independent Accountability Panel, *2016: Old Challenges, New Hopes, Accountability for the Global Strategy for Women's and Children's and Adolescents' Health*, pp. 9–11; and A/HRC/21/22.

[63] Carmel Williams and Paul Hunt, "Neglecting human rights: accountability, data and Sustainable Development Goal 3", International Journal of Human Rights, vol. 21, No. 8 (2017), pp. 1118 and 1120.

as tends to happen with review in the context of development and global health, or conflated with accountability.[64] Effective monitoring, review and, ultimately, accountability, are dependent on high quality data, disaggregated, for instance, by age, sex, geographic location, ethnicity, socioeconomic status and other factors, as nationally applicable. Assessing whether the targets under the Sustainable Development Goals have been met will be equally dependent on the quality and availability of such data, two areas where major gaps, particularly at the country level, have been identified. With regard to identifying key populations vulnerable to HIV, for instance, stigma remains an obstacle to comprehensive data collection, with these populations being inadequately accounted for.[65]

39. The use of indicators is a key element of human rights-based monitoring, and the indicator framework for the Sustainable Development Goals has been assessed as "capturing only a partial measure of the impact that Goal 3 may have on people's right to health entitlements and duty bearers' corresponding obligations" and not reflecting the full extent to which health-related rights are upheld.[66] Consequently, right to health indicators are necessary to facilitate the thorough-going monitoring that would yield the information necessary for competent review and remedial action. Recourse to human rights norms also places a duty on States to cooperate towards capacity-building for data collection.

40. The High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents recommended that all States should ensure that national accountability mechanisms (for example, courts, parliamentary oversight, patients' rights bodies, national human rights institutions and health sector reviews) are appropriately mandated and resourced to uphold human rights to health and through health.[67] At the national level, accountability can be enhanced through the establishment or strengthening of transparent, inclusive and participatory processes and mechanisms, with jurisdiction to recommend remedial action. Such mechanisms and processes include courts or quasi-judicial and non-judicial bodies, complaints mechanisms within the health system, patients' rights associations, national human rights institutions and professional standards associations.[68] Accountability is further strengthened by international human rights mechanisms, such as the human rights treaty bodies, the special procedures of the Human Rights Council and the universal periodic review, and regional mechanisms.

5. Participation

41. According to the General Assembly, the 2030 Agenda is a plan of action for people, planet and prosperity, which all countries and stakeholders, acting in collaborative partnership, will implement. Target 16.7 of the Sustainable Development Goals is to ensure responsive, inclusive, participatory and representative decision-making at all levels. The participation of rights holders and other stakeholders in the development, implementation and monitoring of policy is not only an imperative of the democratic process but also a prerequisite for effective policymaking, as it facilitates public health responses that are relevant to the context and ensures that interventions reach the most affected communities.[69] Promoting health must involve effective community action in setting

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[64] Ibid.

[65] Sara L.M. Davis, "The uncounted: politics of data and visibility in global health", International Journal of Human Rights, vol. 21, No. 8 (2017), p. 1149.

[66] Carmel Williams and Paul Hunt, "Neglecting human rights: accountability, data and Sustainable Development Goal 3", International Journal of Human Rights, vol. 21, No. 8 (2017), p. 1129.

[67] WHO, *Leading the realization of human rights to health and through health: Report of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents* (2017), p. 48, recommendation 7.

[68] Jyoti Sanghera and others, "Human rights in the new Global Strategy", British Medical Journal, vol. 351, supplement 1 (September 2015), p. 44; and Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 59–62.

[69] See, for example, Joint United Nations Programme on HIV/AIDS (UNAIDS), "Non-discrimination on responses to HIV" (2010), paras. 18–22; Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 54; European Union Agency for Fundamental Rights, *Challenges facing civil society organisations working on human rights in the EU* (Luxembourg, 2017), p. 39.

priorities, making decisions, planning, implementing and evaluating strategies to achieve better health.[70]

42. Civil society organizations play a vital role in holding authorities to account, reaching populations and communities that are frequently overlooked, and advocating for their rights. Recent trends towards restrictions on civic space, particularly limitations on the activities of civil society organizations, constitute a significant challenge to ensuring the effective participation of a wide range of stakeholders. Examples of restrictions include legislative and bureaucratic barriers, including onerous registration requirements, the harassment, intimidation and killing of advocates, censorship and the use of criminal legislation to penalize health workers, currently widespread in certain conflict situations.[71]

43. The Special Rapporteur on health refers to an unbalanced approach to human rights, where undue restrictions in the enjoyment of civil and political rights undermine the full realization of the right to health, leading to a failure to implement the principles of participation and empowerment, and undermining the crucial role that civil society can play in promoting societal health and well-being.[72] In the context of promoting human rights within the European Union for example, civil society organizations have noted that limitations include: a lack of clarity and transparency regarding who is consulted before decisions are made; no systematic consultation of all key players; limited access to information on policy or legal initiatives; and a lack of awareness of the various modes and methods of involving stakeholders in law and policymaking in a meaningful and effective way.[73]

44. In order to ensure meaningful participation, the full spectrum of stakeholders must be recognized, and those who are typically excluded from participatory processes, such as persons with disabilities, children, youth and adolescents, women, older persons and persons living in remote or rural areas, must be included. Examples of human rights-based interventions include: (a) ensuring an enabling regulatory, administrative and financial environment for civil society organizations; (b) building, through education and awareness-raising, the capacity of rights holders to participate and to claim their rights; (c) ensuring that transparent and accessible mechanisms for engaging stakeholders' participation and facilitating regular communication between rights holders and health-service providers are established and/or strengthened at the community, subnational and national levels; and (d) ensuring stakeholders' participation in priority setting, in policy and programme design, implementation, monitoring and evaluation and in accountability mechanisms.

V. Emerging good practices

45. The call for contributions towards the present report elicited a large number of submissions, including examples of what could be considered as emerging good practices. Due to space constraints, several emblematic examples are highlighted below, and all the submissions may be viewed on the OHCHR website.

46. The criteria proposed for the characterization of good health practices by the Special Rapporteur on health in 2003 are helpful in understanding whether a good health practice also amounts to a right to health good practice. From the perspective of the right to health, a good practice must: demonstrably enhance an individual's or group's enjoyment of one or more elements of the right to health; pay particular attention to groups in vulnerable situations; and be consistent with the enjoyment of all human rights in process and outcome.[74] Practices that meet the above-mentioned criteria also enhance the availability, accessibility, acceptability and quality of health facilities, goods and services, the active and

[70] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 54.

[71] World Alliance for Citizen Participation (CIVICUS), "People power under attack: findings from the CIVICUS Monitor" (April 2017).

[72] See A/HRC/29/33, para. 58.

[73] European Union Agency for Fundamental Rights, *Challenges facing civil society organisations working on human rights in the EU* (Luxembourg, 2017), pp. 39–40.

[74] See A/58/427, para. 45.

informed participation of individuals and groups in health policies, programmes and projects and the right to health monitoring and accountability mechanisms that are effective, transparent and accessible.[75]

Enhancing the enjoyment of the right to health

47. The United Nations Population Fund (UNFPA) provided an example of expanding access to care for the poorest and most marginalized women and girls living with obstetric fistula. In 2009, Comprehensive Community Based Rehabilitation in Tanzania came together with UNFPA and Vodacom, a mobile telecommunications technology company, to work on a project to help women and girls gain access fistula repair surgery through the M-Pesa mobile telephone money transfer service. The free fistula surgery provided by Comprehensive Community Based Rehabilitation in Tanzania is now accessible to many women and girls for whom the high costs of transport were previously prohibitive. Using mobile-to-mobile banking technology, funds can now be transferred to fistula patients to cover this cost, with the help of community-based outreach workers, or "ambassadors", who identify and assist woman and girls living with fistula in their local communities. UNFPA reports that, since the project was launched, the number of women receiving fistula treatment has grown exponentially.[76]

Focus on groups in vulnerable situations

48. Morocco has integrated human rights and ethics into training on HIV and syphilis testing in prisons provided to doctors, dentists and psychologists.[77] In Mexico, following a qualitative study on stigma and discrimination in health centres, building on health personnel testimonies, training material for health personnel was developed to address stigma and discrimination.[78]

Availability of health facilities, goods and services

49. With regard to enhancing the availability of medicines, following the addition of new medicines (for the treatment of hepatitis C, tuberculosis and cancers) to the WHO Model List of Essential Medicines, in 2017, Malaysia issued a government-use licence for direct acting antivirals to allow the import of generic versions of Sofosbuvir, a hepatitis C drug.[79]

Accessibility

50. In Morocco, the Minister of Health has established a package of services dedicated to women and child victims of violence, to which all Moroccan nationals and all migrants, regardless of their migratory status, have access. In 2017, South Africa launched a national HIV plan, which is aimed at significantly reducing infection rates, discrimination and stigma by providing information, psychosocial support and treatment to all members of the lesbian, gay, bisexual, transgender and intersex community.[80] In 2017, Denmark removed self-identification as transgender from its list of mental health conditions, an important contribution to addressing the stigmatization and pathologization of diverse gender identities.[81] In Portugal, decriminalization of drug use has been helpful in decreasing stigmatization, and ensuring access to health services for all, without discrimination.[82]

51. Accessibility also means economic accessibility of health facilities, goods and services. In Australia, the National Immunisation Programme is a joint initiative of the Commonwealth Government and state and territory governments. Providing free vaccines

[75] Ibid., para. 53.
[76] Submission by UNFPA, pp. 4–5.
[77] Submission by Morocco, p. 10.
[78] Submission by Mexico, p. 4.
[79] Submission by the Major Group for Children and Youth, p. 2.
[80] Submission by the International Lesbian, Gay, Bisexual, Trans and Intersex Association, p. 10.
[81] Ibid., p. 3.
[82] Submission by Students for Sensible Drug Policy, p. 1.

through primary health-care providers, the Programme facilitates the provision of vaccines against 17 diseases, including measles, diphtheria, whooping cough, human papillomavirus and meningococcal C, which children, families and older persons can access at no cost.[83] In 2012, reforms to the health system of Mexico improved access to health coverage, making available the people's health insurance scheme, offering universal access to a comprehensive package of personal health services with financial protection.[84]

52. With regard to accessibility of health information, France has introduced the Nutri-Score nutrition-labelling scheme, which is aimed at improving nutritional information on packaging, thus guiding consumers towards choosing foods with higher nutritional value.

Cultural acceptability of health facilities, goods and services

53. In Mexico, health-care staff are trained to provide care that is culturally appropriate care for all the different sections of the population. Health-care protocols paying particular attention to indigenous women have been prepared, reclaiming traditional practices of indigenous midwives.[85] Australia has published the National Aboriginal and Torres Strait Islander Health Plan 2013–2023, which provides an overarching framework for the delivery, by the health system, of primary, secondary and tertiary health care that is evidence-based, culturally safe, of high quality, responsive and accessible for the relevant rights holders, without discrimination or racism. Additionally, the Cultural Respect Framework for Aboriginal and Torres Strait Islander Health 2016–2026 embeds cultural respect principles into the Australian health system by building the cultural competence of mainstream primary health-care services and supporting the ongoing viability of indigenous-specific health services.[86]

Monitoring and accountability for the right to health

54. In Ecuador, the Office of the Ombudsman has a constitutional mandate to protect and promote the human rights of all citizens, including by protecting the right to health. In this regard, it has taken action, both at the national and regional levels, to protect rights holders whose right to health has been violated.[87]

Community participation

55. In their joint submission, Aidsfonds and the International HIV/AIDS Alliance emphasize that community-led organizations of persons living with HIV, key populations and other affected communities have played a critical role in overcoming many of the major challenges in the HIV response, reaching persons most affected by HIV with critical HIV-prevention services, providing support for adherence to treatment and other essential health services and advocating for resources and the human rights of persons living with and affected by HIV. Examples of community responses in this area include mothers2mothers, a South African community-led initiative that has reached 1.2 million women living with HIV in nine countries. One major element of the work of mothers2mothers is the training of mothers living with HIV as mentors, supporting and advising pregnant women, and assisting them with access to services to prevent mother-to-child transmission of HIV.[88]

VI. Conclusion

56. **The 2030 Agenda for Sustainable Development is firmly anchored in human rights principles and standards. Consequently, human rights provide the normative context and international standards for the implementation of Sustainable**

[83] Submission by Australia.
[84] Submission by Mexico, p. 2.
[85] Ibid.
[86] Submission by Australia, p. 4.
[87] Submission by Office of the Ombudsman, Ecuador.
[88] Joint submission by Aidsfonds and the International HIV/AIDS Alliance, pp. 2–3.

Development Goal 3 and the other health-related Goals, with the dignity and agency of rights holders at its centre. The right to health framework can help to address some of the key challenges in implementing health-related Goals, including: enhancing the health of women, girls and adolescents; operationalizing the pledge to leave no one behind through the overarching duty to eliminate discrimination and marginalization; and securing universal health coverage. Strong leadership and determined actions to fully respect, protect and fulfil the right to health, ensure effective participation and strengthen accountability would contribute significantly to the effective implementation and achievement of the health-related Sustainable Development Goals.

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Report of the Special Rapporteur on the independence of judges and lawyers

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the independence of judges and lawyers, prepared pursuant to Council resolutions 35/11 and 26/7. Judicial councils play an essential role in guaranteeing the independence and the autonomy of the judiciary. The underlying rationale for their creation is the need to insulate the judiciary and judicial career processes from external political pressure. In addition to their primary function of safeguarding judicial independence, a growing number of judicial councils have been entrusted with far-reaching powers in the area of promoting the efficiency and quality of justice, and of rationalizing the administration of justice, court management and budgeting.

In the report, the Special Rapporteur shows that there is no one-size-fits-all model of judicial council. Each judicial governing body originates from a legal system with distinct historical, cultural and social roots; the specific role of each body varies from one country to the other. The Special Rapporteur shows that the number of judicial councils has increased greatly in recent decades, and estimates that, to date, over 70 per cent of the countries in the world have some form of judicial council. This is an area lacking in statistical data at the global level, making it challenging to assess global trends.

The Special Rapporteur also shows that, despite the increase in the number of judicial councils in all regions of the world, there is a lack of international legal standards at the international level specifically devoted to the role, composition and functions of judicial councils. The Basic Principles on the Independence of the Judiciary do not include any provision specifically devoted to judicial councils. The most comprehensive efforts to develop minimum standards relating to the creation, membership and role of judicial councils have been undertaken in Europe, under the aegis of the Council of Europe.

In the light of the existing international and regional standards, and based on the contributions received from States and non-State actors, the Special Rapporteur offers some recommendations relating to the establishment, composition and functions of judicial councils. These recommendations do not purport to identify an "ideal model" of national judicial council, but rather seek to define common principles, general trends and good practices for ensuring the independence of such bodies, where they exist, and their effectiveness in the discharge of their functions as guarantors of judicial independence.

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Report of the Special Rapporteur on the independence of judges and lawyers

Contents

		Page
I.	Introduction	3
II.	Overview	3
III.	Legal standards	5
	A. International standards	5
	B. Regional standards	5
IV.	Judicial councils: general principles	7
	A. Definition	7
	B. General mission	8
	C. Establishment	8
V.	Duties and responsibilities of judicial councils	9
	A. Selection, appointment and promotion of judges	10
	B. Court administration and budget control	11
	C. Disciplinary proceedings and accountability	12
VI.	Composition of judicial councils	13
VII.	Conclusions	16
VIII.	Recommendations	17
Annex		
	List of respondents	20

I. Introduction

1. This is the second report submitted by the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, pursuant to Human Rights Council resolution 35/11.

2. The present report focuses on the role that judicial councils and/or other bodies independent from the legislative and executive branches of powers play in ensuring the independence of the judiciary.

3. In preparing this report, the Special Rapporteur called for contributions from States, international and regional human rights mechanisms, national human rights institutions, judicial councils and civil society. The Special Rapporteur requested information on the existence of a national body or mechanism in charge of guaranteeing judicial independence; the composition of this body or mechanism and the procedure for the appointment of its members; and the competences of this body or mechanism in relation to all decisions relating to the careers of judges (selection, appointment, promotion, suspension and dismissal).

4. At the time of writing the present report, the Special Rapporteur has received a total of 77 responses. The Special Rapporteur wishes to convey his sincerest gratitude to all States and non-State actors that provided contributions for the preparation of the report. The annex contains a full list of respondents. All submissions are available on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

5. The Special Rapporteur would like to thank the Human Rights Clinic of the Human Rights Research and Education Centre of the University of Ottawa for its continuous support in the research and drafting of the present report.

6. The Special Rapporteur also expresses his appreciation for the suggestions received by a group of 30 organizations of the Americas in a meeting organized in Lima on 13 April 2018 by the Due Process of Law Foundation.

II. Overview

7. The independence of the judiciary is an essential component of the right to a fair trial and the rule of law. The requirement of independence and impartiality of judges is not a prerogative or privilege granted in their own interest, but is justified by the need to enable judges to fulfil their role as guardians of the rule of law and of the human rights and fundamental freedoms of the people. As such, the independence of the judiciary should be regarded by every citizen as a guarantee of truth, freedom, respect for human rights and impartial justice free from external influence.

8. The independence of the judiciary is a corollary of the democratic principle of separation of powers, according to which the executive, the legislature and the judiciary constitute three separate and independent branches of Government. According to this principle, different organs of the State have exclusive and specific responsibilities, and it is not permissible for any branch of power to interfere in the others' spheres of control.

9. International standards provide that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, and to adopt all appropriate measures to ensure that judges can decide matters before them impartially and without any improper influences, pressures or interferences.

10. In order to guarantee judicial independence, some countries created self-governing judicial bodies, such as judicial councils, to protect and promote the independence and the autonomy of the judiciary. The underlying rationale for their creation was the need to insulate the judiciary and judicial career processes from external political pressure, mainly from the executive branch of power.

11. Judicial councils exist in both civil and common law countries, but they are a particularly prominent feature of legal cultures with a civil law tradition. The first High

Council of the Judiciary (Conseil Supérieur de la Magistrature) was established in France in 1883; it became an autonomous constitutional organ in 1946, but only a minority of its members (4 out of 12) were magistrates elected directly by their peers. Several other Western European countries followed suit in establishing oversight councils seeking to ensure judicial independence. In 1948, the High Council of the Judiciary of Italy became the first judicial council to fully insulate the judiciary from any external interference.

12. There is no one-size-fits-all model of judicial council. Each judicial governing body originates from a legal system with distinct historical, cultural and social roots. Nevertheless, all councils must be governed by the same general principles of the independence of the judiciary and division of powers between branches of Government.

13. Countries have followed two main trends in creating judicial councils, depending on whether their responsibilities are primarily focused on judicial careers or management of court operations. In 1999, a study on different judicial councils in the European Union distinguished between a southern European model, in which the body was constitutionally rooted and only fulfilled primary functions in safeguarding judicial independence (for instance, with regard to the appointment of, and disciplinary proceedings against, judges), and a northern European model, in which the council had far-reaching powers in the area of administration, court management and budgeting.[1] While countries in Western Europe follow this distinction fairly closely, other countries around the world have tended to borrow aspects from both models. The array of powers and responsibilities granted to a judicial council has become highly country specific and often constitutes variations of these two models.[2]

14. In recent decades, the number of judicial councils has increased greatly in Central and Eastern Europe, Latin America, Africa and the Middle East, and it is estimated that, to date, over 70 per cent of the countries in the world have some form of judicial council. However, this is an area lacking in statistical data at the global level, making it challenging to assess global trends.

15. All judicial councils share common experiences and challenges and are governed by the same general principles. As key judicial bodies, judicial councils are supposed to play a pivotal role in ensuring judicial independence. They are supposed to function as intermediaries between Government and the judiciary, and operate autonomously within the judicial systems of their respective jurisdictions to guarantee, inter alia, the maintenance of the rule of law and the protection and promotion of human rights and fundamental freedoms.

16. Each judicial governing body has a specific role that varies from one country to the next, in accordance with the specific problems that each establishment is supposed to address. In some countries, the main challenge is to counter executive, legislative or political party domination of the judiciary; in others, the main function of the judicial council is to limit the oversight function of the Supreme Court, which is perceived to have excessive control over lower court judges. In another group of countries, judicial councils are established to improve the effectiveness and efficiency of the judiciary by transferring the management of administrative matters from the judiciary to a body that is independent from the court system.[3]

17. Since the establishment of the mandate, several Special Rapporteurs have highlighted the crucial role that judicial councils play in guaranteeing the independence of the judiciary, and recommended that member States consider establishing an independent body in charge of the selection and discipline of judges, and adopt appropriate measures to

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[1] W. Voermans and Pim Albers, *Councils for the Judiciary in EU Countries*, European Commission for the Efficiency of Justice (Strasbourg, Council of Europe, 2003), p. 12.

[2] Violaine Autheman and Sandra Elena, *Global Best Practices: Judicial Councils — Lessons Learned from Europe and Latin America*, Rule of Law White Paper Series, No. 2 (Arlington, International Foundation for Electoral Systems, April 2004), pp. 5–6.

[3] United States Agency for International Development, Office of Democracy and Governance, *Guidance for Promoting Judicial Independence and Impartiality — Revised Edition* (Washington, D.C., January 2002), p. 16.

guarantee a plural and balanced composition (see A/HRC/11/41, paras. 24–30 and 97). Similar considerations have been included in previous reports on judicial accountability (see A/HRC/26/32, paras. 88–93 and 125–126) and continuing education for judges (see A/HRC/14/26, para. 53), as well as in a number of country mission reports (e.g. A/HRC/35/31/Add.1, A/HRC/32/34/Add.1, A/HRC/23/43/Add.3 and A/HRC/23/43/Add.1).

18. However, the creation of a judicial council is not in itself sufficient to ensure judicial independence and promote judicial accountability. In order to enable a council to play its role of guarantor of judicial independence, it is important to ensure that it is granted extensive powers in all aspects relating to judicial careers, and that its institutional structure and composition contribute to the insulation of the judiciary and judicial career processes from external political pressure.

19. In a number of mission reports, the Special Rapporteur and his predecessors identified serious flaws in the structure, composition and responsibilities of judicial councils that undermined their ability to promote judicial independence (see, for example, the reports on Poland (A/HRC/38/38/Add.1, paras. 63–70 and 85); Guinea Bissau (A/HRC/32/34/Add.1, paras. 11, 35–36 and 110); Maldives (A/HRC/23/43/Add.3, paras. 44–47 and 99); and El Salvador (A/HRC/23/43/Add.1, paras. 49, 51–55, 61–63, 113 and 119)). In these and other cases, the creation of a judicial council has not led to substantial improvements in the insulation of the judiciary from political control and interferences.

20. In the present report, the Special Rapporteur assesses existing international and regional standards relating to judicial councils or equivalent independent and autonomous bodies established at the national level to promote and strengthen the independence of the judiciary. The aim is not to identify an "ideal model" of judicial council or to provide a comprehensive analysis of the effectiveness of these institutions in securing judicial independence and accountability. Based on the contributions received, the report seeks to define common principles for ensuring the independence of such bodies, where they exist, and to identify good practices relating to their mission, composition and functions.

III. Legal standards

A. International standards

21. The Basic Principles on the Independence of the Judiciary list the measures that States are required to adopt to guarantee the independence of the judiciary at the national level. They require that the independence of the judiciary be guaranteed by the State and enshrined in the Constitution or the law of the country, and reaffirm that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1). They also include specific provisions concerning the status of judges, including their independence and impartiality (principles 2 and 4), qualification and appointment (principle 10), conditions of service and remuneration (principle 11), security of tenure (principle 12), promotion (principle 13), assignment of cases (principle 14) and disciplinary proceedings against judges (principles 17 to 20). However, the Basic Principles do not include any specific provision concerning the establishment of judicial councils.

22. At the global level, only the revised Universal Charter of the Judge provides for the establishment of "a Council for the Judiciary, or another equivalent body … save in countries where this independence is traditionally ensured by other means" and includes specific provisions relating to the composition and competences of this body in the fields of recruitment, training, appointment, promotion and discipline of judges.[4]

[4] Universal Charter of the Judge, approved by the Central Council of the International Association of Judges in Taipei, Taiwan Province of China on 17 November 1999 and updated in Santiago on 14 November 2017.

B. Regional standards

23. The general functions, composition and core competencies of judicial councils are dealt with in a number of principles, guidelines and recommendations adopted by associations or summits of judges at the regional level. Some of these instruments only focus on judicial appointments,[5] while others provide a more comprehensive analysis of the role judicial councils should play in securing the independence and autonomy of the judiciary.[6]

24. The most comprehensive efforts to develop minimum standards relating to the creation, membership and role of judicial councils have been undertaken in Europe, under the aegis of the Council of Europe. Initially, these efforts focused on the need to ensure that the selection and career development of judges be made with "the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary".[7]

25. These instruments have now been supplemented by more detailed standards relating to the composition and functions of judicial councils. In 2007, the Consultative Council of European Judges adopted, at the request of the Committee of Ministers of the Council of Europe, an opinion on the council for the judiciary at the service of society. This opinion provides a comprehensive analysis of the composition and functions of judicial councils.[8] The Magna Carta of Judges, adopted by the Consultative Council in 2010, also recommends the establishment of "a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning [the status of judges] as well as the organisation, the functioning and the image of judicial institutions".[9] In 2010, the Committee of Ministers of the Council of Europe adopted a new recommendation on judicial independence, which included a specific chapter on councils for the judiciary, as well as detailed provisions on their authority and functions.[10]

26. In 2013, the Inter-American Commission on Human Rights published a report on the guarantees for the independence of justice operators in the Americas, which include a specific section on the organs of governance and administration of such operators.[11] The Commission noted that, although no provision of international law requires the creation of such a body, the establishment of independent bodies charged with the administration and

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[5] See the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA [Law Association for Asia and the Pacific] Region, adopted at the 6th Conference of Chief Justices of Asia and the Pacific, held in Beijing on 19 August 1995; and the Commonwealth's Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence, adopted on 19 June 1998.

[6] See the Istanbul Declaration on Transparency in the Judicial Process, adopted by the Conference of Chief Justices and Senior Justices of the Asian Region, held in Istanbul from 20 to 22 November 2013, and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia: Judicial Administration, Selection and Accountability, 2010 (hereinafter, "Kyiv Recommendations on Judicial Independence").

[7] See Council of Europe, European Charter on the Statute of Judges, 1998, art. 1.3. See also the Council of Europe Committee of Ministers, recommendation No. R (94) 12 on the independence, efficiency and role of judges, 1994, principle 1, para. 2 (c).

[8] Consultative Council of European Judges, opinion No. 10 (2007) on the council for the judiciary at the service of society, 23 November 2007 (hereinafter, "opinion No. 10 of the Consultative Council of European Judges").

[9] See Magna Carta of Judges (Fundamental Principles), adopted at the 11th plenary meeting of the Consultative Council of European Judges, held in Strasbourg, France, from 17 to 19 November 2010, para. 13.

[10] Council of Europe Committee of Ministers, recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, 2010.

[11] See Inter-American Commission on Human Rights, "Guarantees for the independence of justice operators: towards strengthening access to justice and the rule of law in the Americas" (December 2013), paras. 240–248.

governance of the judiciary is "a best practice to strengthen its independence", and urged those States that do not have such bodies "to create them and endow them with the guarantees that enable them to perform each of their assigned functions independently", in the manner prescribed by international law standards (para. 248).

IV. Judicial councils: general principles

A. Definition

27. There is no generally agreed definition of a judicial council. In its recommendation on judicial independence adopted in 2010, the Committee of Ministers defines "councils for the judiciary" as "independent bodies ... that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system" (para. 26). The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia define "judicial councils" as "bodies entrusted with specific tasks of judicial administration and independent competences in order to guarantee judicial independence" (para. 2). Other legal instruments do not provide a definition of what constitutes a judicial council, and simply focus on the necessary requirements that such institutions must possess, namely independence from the executive and legislative branches of power and a large proportion of its membership made up of members of the judiciary.

28. The diversity of legal systems is reflected in the choice made by the legislator on the names of the authorities entrusted with the protection of judicial independence at the national level. In civil law countries, these bodies are generally referred to as a "judicial council",[12] "council for the judiciary",[13] "supreme/superior judicial council"[14] or "high council of the judiciary".[15] In common law countries, they are generally referred to as a "judicial services commission". However, other terms are used, such as "judicial and legal service commission",[16] "council of administrative affairs of the judiciary",[17] "general council of the judiciary"[18] and "judicial and bar council".[19] In some cases, the name of the body depends on the specific functions entrusted to it (e.g. judicial appointment council, commission or board,[20] "judges' examination committee",[21] "judges proposals board",[22] "judges personnel committee"[23] and "judicial inquiry commission".[24])

29. In the present report, the Special Rapporteur uses the term "judicial council" to refer to the various independent and autonomous bodies established at the national level to guarantee the independence of individual judges and the judiciary as a whole.

30. In addition to their responsibilities for safeguarding the independence of judges, some judicial councils are also responsible for public prosecutors.[25] The present report only focuses on the role and functions of judicial councils as regards judges. Questions concerning the status of prosecutors, including their appointment, promotion, capacity-building and discipline, as well as the organization and functioning of national prosecutorial councils or equivalent independent bodies, are dealt with in a previous report specifically

[12] Costa Rica, Hungary, Jordan, Nepal and Slovakia.
[13] Bolivia (Plurinational State of), El Salvador and Latvia.
[14] Algeria, Andorra, Greece and Togo.
[15] Belgium, Georgia, Italy and Serbia.
[16] Mauritius.
[17] Oman.
[18] Mongolia.
[19] Philippines.
[20] Denmark, Ireland, Japan, Malta and Norway.
[21] Estonia and Lithuania.
[22] Sweden.
[23] Republic of Korea.
[24] Liberia.
[25] Bosnia and Herzegovina, Bulgaria, Italy and Turkey.

devoted to the independence and impartiality of prosecutors and prosecution services (A/HRC/20/19).

31. Not all the States that responded to the questionnaire have established a national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges. Some of those respondents stated that those functions were carried out by other authorities in their countries.[26]

B. General mission

32. The responses to the questionnaire show that the main objective of most judicial councils is to safeguard the independence of the judicial system and the independence of individual judges.

33. Judicial councils also have another general objective, namely to promote the efficiency and quality of justice. This objective is closely linked to the strengthening of judicial independence, since the transfer of administrative functions to a judicial council independent of the executive power limits external interference in the administration of justice.

34. In many European countries, including those in which judicial councils originated, the improvement of administrative management was not included in the functions of these bodies and remained in the hands of the Ministry of Justice. On the contrary, the improvement of administrative management and control over the judicial budget and personnel constituted the main reason for the establishment of judicial councils in some northern European countries (e.g. Denmark and Sweden), as well as in a number of Latin American countries.[27]

35. The third objective that the establishment of a judicial council aims to achieve is that of striking a balance between judicial independence and self-administration, on the one hand, and the accountability of judges and the judiciary, on the other. Regional standards on the independence of the judiciary recommend that judicial councils or similar independent bodies be entrusted with responsibility for holding judges accountable for their conduct. This competence is reflected in many of the responses to the questionnaire.[28]

36. In order to avoid the excessive concentration of powers in one judicial body or the perception of corporatism, some regional standards specifically recommend the establishment of different independent bodies competent for specific aspects of judicial administration — such as selection, promotion and training of judges, discipline, professional evaluation and budget — without subjecting them to the control of a single institution or authority.[29] The existence of different self-governing institutions in charge of different aspects of a judicial career was highlighted in a number of the contributions received.[30]

37. The Basic Principles on the Independence of the Judiciary require States to allocate adequate resources to the judiciary in order to enable it to function properly (principle 7). The same principle applies, mutatis mutandis, to judicial councils. While they are not per se judicial authorities and do not exercise judicial functions, their function as a watchdog regarding the autonomy and independence of the judiciary require that judicial councils are independent and impartial from the executive and legislative branches of powers. For those reasons, judicial councils should be provided with adequate human and financial resources to perform their functions independently and autonomously. In particular, they should have their own premises, a secretariat and a sufficient number of qualified staff to carry out their functions.

[26] Czechia and Germany.
[27] Autheman and Elena, *Global Best Practices*, p. 3.
[28] E.g. Azerbaijan, Bahrain, Croatia, Georgia, Mauritania, Morocco, Portugal and Togo.
[29] See the Kyiv Recommendations on Judicial Independence, para. 2.
[30] E.g. Jordan, Latvia and Malta.

38. In most countries that responded to the questionnaire, the judicial council has its own budget and dedicated personnel. In a few cases, human and financial resources necessary to the judicial council to perform its functions are provided by the court administration[31] or the Ministry of Justice.[32]

C. Establishment

39. A number of human rights mechanisms and bodies — including the Special Rapporteur on the independence of judges and lawyers and the Inter-American Commission on Human Rights (see paras. 17 and 26 above) — have recommended the establishment of an independent judicial council.

40. The position of the European Commission for Democracy through Law (Venice Commission) is more nuanced. In an opinion on judicial appointments, the Commission noted that a variety of different systems for judicial appointment exists in Europe, and that there is not a single model that would apply to all countries. In older democracies, the executive power has sometimes a decisive influence on judicial appointments. These systems have worked well in practice and have allowed for an independent judiciary because the executive is restrained by legal culture and traditions. New democracies, however, have not had a chance to develop these traditions. At least in these countries, the Commission recommends that States that have not yet done so consider the establishment of an independent judicial council to prevent political abuse in the appointment of the judiciary.[33]

41. In order to guarantee their independence from the executive and legislative powers and ensure effective self-governance to the judiciary, some — but not all — regional standards recommend that judicial councils "be positioned at the constitutional level in those countries having a written Constitution, or in the equivalent basic law or constitutional instrument in other countries".[34]

42. Establishing a judicial council through a constitutional provision emphasizes the vital role that such a council plays as a guarantor of judicial independence, especially in countries that are in the process of consolidating democratic institutions. A constitutional provision would grant the newly-created institution "the legitimacy of constitutional recognition and may help insulate it from interferences from the executive, legislative or judiciary through legislation, decrees or rulings".[35] The Constitution should include provisions relating to the setting up of such body, its composition and the definition of its functions, as well as its autonomy vis-à-vis the executive and legislative branches of power. Considering that judicial councils do not belong to the hierarchy of the court system and cannot as such decide on the merits of the cases, the Constitution should also regulate relations with the courts, and especially with judges.[36]

43. In the majority of States that responded to the questionnaire, the Constitution contains specific provisions concerning the establishment of a judicial council.[37] In some cases, the composition, powers and autonomy of the council are regulated by ordinary law.[38]

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[31] Norway.

[32] Mauritania.

[33] See Venice Commission, opinion No. 403/2006 on judicial appointments, 22 June 2007, paras. 44–48.

[34] See opinion No. 10 of the Consultative Council of European Judges, para. 11.

[35] Autheman and Elena, *Global Best Practices*, p. 7.

[36] See opinion No. 10 of the Consultative Council of European Judges, para. 13.

[37] Argentina, Bahrain, El Salvador, Mauritania, Mongolia, Nepal, Poland, Slovenia and Turkey.

[38] Belgium, Jordan, Montenegro, Norway, Paraguay and Sweden.

V. Duties and responsibilities of judicial councils

44. Some regional standards list the tasks that judicial councils may perform, alone or in cooperation with other bodies.[39] The Inter-American Commission on Human Rights considers that the functions entrusted to judicial councils should be secured by law, and include administration, selection, appointment and the disciplinary system.[40] Those tasks are intimately linked to the constitutional role of a judicial council as guarantor of the independence of the judiciary, and should therefore be set out in the Constitution, or in the equivalent basic law or constitutional instrument (see paragraph 41 above).

45. Regional instruments recommend that the different functions of a judicial council — such as appointment of judges, disciplinary matters and training — be attributed to various branches of such a council[41] or to different independent bodies competent for specific aspects of judicial administration.[42] The composition of these branches or bodies should reflect the type of tasks and the way they should be carried out.

46. Some of those competences, for instance the appointment and promotion of judges, are exercised by the majority of judicial councils, whereas other functions, for example those relating to management and budget matters, are attributed only to a limited number of councils. Overall, judicial councils should have a wide range of competencies to better protect and promote judicial independence and the efficient administration of justice.

47. In this section, the Special Rapporteur only focuses on the main competences carried out by judicial councils in relation to (a) the selection, appointment and promotion of judges, (b) court administration and budget control and (c) disciplinary proceedings and accountability.

A. Selection, appointment and promotion of judges

48. The most widely recognized function of judicial councils is their role in the appointment of judges. In order to guarantee the independence of the judiciary, international and regional standards recommend that decisions on the appointment and promotion of judges be taken by a judicial council or an equivalent body independent of the legislative and executive branches of power. International and regional mechanisms have made similar recommendations.

49. The procedure for the selection, appointment and promotion of judges should be based on objective criteria previously established by law or by the competent authority. Decisions concerning the selection and careers of judges should be based on merit, having regard to the qualifications, skills and capacities of the candidates, as well as to their integrity, independence and impartiality. In the selection of judges, there should be no discrimination against judges or candidates for judicial office on any grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, sexual orientation or other status. The requirement that a candidate for judicial office must be a national of the country concerned should not, however, be considered discriminatory.

50. In a thematic report on the guarantees for judicial independence (see A/HRC/11/41, paras. 23–34), the Special Rapporteur took note of the variety of existing systems for the

[39] See opinion No. 10 of the Consultative Council of European Judges, para. 42; and European Network of Councils for the Judiciary, resolution on self-governance for the judiciary: balancing independence and accountability, adopted at its General Assembly, held from 21 to 23 May 2008 in Budapest, para. 2.

[40] See Inter-American Commission on Human Rights, "Guarantees for the independence of justice operators", para. 243.

[41] See opinion No. 10 of the Consultative Council of European Judges, para. 43.

[42] See the Kyiv Recommendations on Judicial Independence, para. 2.

selection and appointment of judges worldwide, and raised general concerns over the involvement of the legislative or executive branches of power in judicial appointments.[43]

51. The election of judges by parliament is sometimes seen as providing greater democratic legitimacy, but it may lead to the politicization of judicial appointments, with political considerations prevailing over objective criteria set out in international and regional standards (merit, qualifications, integrity, sense of independence and impartiality, etc.).

52. In cases in which constitutional or legislative provisions prescribe that the Head of State, the Government or the legislative branch of power formally appoints or promotes judges, regional standards provide that the judicial council or an equivalent independent authority, such as a qualification commission, should be authorized to make recommendations or express opinions that the relevant appointing authorities follow in practice.[44]

53. The responses to the questionnaire show that States have elaborated different procedures for the appointment and promotion of judges, which can be divided into two main categories: elective systems, in which judges are elected by parliament,[45] and direct appointment systems. In direct appointment systems, the appointing body can be the President of the Republic/Head of State,[46] the Government[47] or the judicial council itself.[48] In most parliamentary systems, the Head of State is bound by a proposal from the judicial council, parliament or a combination of both. In some countries, the President of the Republic retains the discretionary power not to follow the advice of the judicial council.[49]

54. In many countries, judges are selected on the basis of national competitive examinations,[50] whereas in others, judges are selected from experienced practitioners.[51] Information concerning judicial vacancies should be made publicly available. The Special Rapporteur has underscored that competitive examinations conducted, at least partly, in a written and anonymous manner can serve as an important tool in the selection process (see A/HRC/11/41, para. 30).

B. Court administration and budget control

55. There are no clearly established standards with regard to the competences of judicial councils in relation to court administration and budget control. Some regional standards recommend that judicial councils be entrusted with general responsibilities with regard to the administration of the court system and/or the allocation of budgetary resources to the various courts,[52] while others only provide that such councils should be consulted by the other State powers on these issues.[53]

56. The Special Rapporteur considers that entrusting judicial councils with general competences in relation to court administration and budget control constitutes an essential

[43] Similar concerns have been raised by the Venice Commission in its opinion No. 403/2006 on judicial appointments, paras. 7–17.

[44] See opinion No. 10 of the Consultative Council of European Judges, para. 49; Council of Europe Committee of Ministers, recommendation CM/Rec(2010)12, para. 47; and the Kyiv Recommendations on Judicial Independence, para. 23.

[45] Costa Rica, El Salvador and Slovenia.

[46] E.g. Czechia, Estonia, Greece, Liberia, Norway and Slovakia.

[47] Australia, Denmark and Sweden.

[48] E.g. Bosnia and Herzegovina, Croatia, Mongolia and Morocco.

[49] Lithuania.

[50] Algeria, Belgium, Portugal, Serbia and Sweden.

[51] Ireland, Sweden and the United Kingdom of Great Britain and Northern Ireland.

[52] Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, principles 36–37; opinion No. 10 of the Consultative Council of European Judges, paras. 76–79; and the Kyiv Recommendations on Judicial Independence, para. 6.

[53] European Charter on the Statute of Judges, art. 1.8; and the revised Universal Charter of the Judge, art. 2-3.

tool to safeguard the independence of the judiciary. The rationale behind the transfer of managerial functions from the Ministry of Justice or the Supreme Court to the judicial council is to reduce external interference, especially from the executive branch, in judicial affairs. The management and administration of the budget allocated to the court system should be entrusted directly to the judiciary or an independent body responsible for the judiciary, such as a judicial council (see A/HRC/11/41, paras. 43 and 101). The Venice Commission considered that decisions on the allocation of funds to courts "must be taken with the strictest respect for the principle of judicial independence" and recommended that the judiciary be provided with "an opportunity to express its views about the proposed budget to parliament, possibly through the judicial council".[54]

57. In some of the countries that responded to the questionnaire, judicial councils have been entrusted with general responsibilities regarding court administration and budget control. In Latvia, for example, the judicial council participates in the development of the policies and strategies of the judicial system, as well as the improvement of the organization of work of the judiciary.

58. In cases in which administrative functions are the responsibility of the highest judicial body, the Special Rapporteur has advocated the separation of administrative and jurisdictional functions, so as to enable the judiciary to concentrate fully on the latter. In a report on El Salvador, for example, the Special Rapporteur recommended that the Supreme Court of Justice relinquish some of the administrative functions currently entrusted to it in favour of another institution, such as the judicial council (see A/HRC/23/43/Add.1, para. 106).

59. Judicial councils should operate in a transparent way, and should be accountable for their activities in the field of court administration and budget control. Transparency is an essential factor in the trust that citizens have in the functioning of the judicial system and a guarantee against the danger of political influence or the perception of self-interest, self-protection and cronyism within the judiciary. Extended financial powers for a council imply its accountability not only vis-à-vis the executive and the legislature, but also vis-à-vis the courts and the public.[55] When judicial councils are endowed with budgetary powers, they must be accountable for the use of the funds to the allocating body by presenting periodical reports to fiscal authorities in which they detail the use of their budgetary resources.

C. Disciplinary proceedings and accountability

60. International and regional standards recognize that individual judges may be subject to disciplinary proceedings and penalties, up to and including removal from office, for sufficiently serious misconduct, for example "incapacity or behaviour that renders them unfit to discharge their duties".[56]

61. The responsibility for disciplinary proceedings against judges should be vested in an independent authority (such as a judicial council) or a court. Some standards explicitly provide that the independent authority competent to hear disciplinary cases and to take a decision on disciplinary measures should be composed primarily of judges.[57] In order to prevent allegations of corporatism and guarantee a fair disciplinary procedure, this authority should also include members from outside the judicial profession, but in no case should such persons be members of the legislative or executive branches of the State. Both the Special Rapporteur (see A/HRC/11/41, paras. 60–61; and A/HRC/26/32, paras. 91–93) and the Human Rights Committee (see general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 20) have stressed that the

[54] See Venice Commission, "Report on the independence of the judicial system, part I: the independence of judges" (Strasbourg, Council of Europe, March 2010), para. 55.

[55] See opinion No. 10 of the Consultative Council of European Judges, para. 75.

[56] Basic Principles on the Independence of the Judiciary, principle 18.

[57] Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA region, principle 36; opinion No. 10 of the Consultative Council of European Judges, para. 64; and the revised Universal Charter of the Judge, art. 7-1.

involvement of members of the executive branch of power (Head of State, Minister of Justice or any other representative of the political authorities) in the disciplinary body is de facto incompatible with the principle of the independence of the judiciary.

62. In order to guarantee a fair disciplinary procedure, some international standards expressly provide that the competence to receive disciplinary complaints and conduct disciplinary investigations and the competence to adjudicate cases of judicial discipline should be vested in separate branches of a judicial council or in different authorities.[58]

63. Disciplinary proceedings should provide the accused judges with all the procedural guarantees set out in article 14 of the International Covenant on Civil and Political Rights, including the right to defend themselves in person or with the assistance of a legal counsel of their choice. Decisions of the disciplinary body should be reasoned and subject to appeal before a competent court.

64. Some of the responses to the questionnaire show that the responsibility for disciplinary proceedings against judges is vested in the judicial council[59] or equivalent independent body.[60] In other countries, all disciplinary proceedings are handled by domestic courts,[61] while in others domestic courts only deal with disciplinary proceedings against justices of the highest courts.[62]

65. Some of the mechanisms used at the national level to suspend or remove judges raise concerns in the light of existing standards concerning the independence of the judiciary. In Hungary, for example, the right to decide upon the dismissal of a judge lies with the President of the Republic. In Liberia, judges may be removed by the Parliament, and the National Bar Association may de facto suspend a judge from office by withdrawing his or her licence to practise law.

VI. Composition of judicial councils

66. There is no standard model that a democratic country is bound to follow in setting up its judicial council, so long as its composition is such as to guarantee its independence and to enable it to carry out its functions effectively.[63] However, there is a tendency at the international level for judicial councils to have a mixed composition, and for a majority of members to be judges elected by their peers.

67. A mixed composition "would present the advantages both of avoiding the perception of self-interest, self-protection and cronyism and of reflecting the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy".[64] It reduces the risk of a sort of esprit de corps that may affect its decision-making process. Those responsible for the administration of justice extend beyond judges and magistrates.

68. When the composition of the council is mixed, it is desirable that a fair balance is struck between members of the judiciary and other ex officio or elected members. If the proportion of judges is too high, this could create "a risk of corporatism and insulate the council from any external oversight".[65]

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[58] See opinion No. 10 of the Consultative Council of European Judges, para. 64; and the Kyiv Recommendations on Judicial Independence, paras. 5 and 26.

[59] E.g. in Azerbaijan, Bahrain, Croatia, Georgia, Mauritania, Morocco, Portugal and Togo.

[60] Office of the Disciplinary Counsel (Bosnia and Herzegovina); Committee for Judges and Magistrates (Malta); Judicial Disciplinary Committee (Republic of Korea); and the National Disciplinary Offence Board (Sweden).

[61] Bosnia and Herzegovina, Costa Rica, Czechia, Denmark, El Salvador, Estonia, Jordan, Lithuania, Nepal, Norway, Philippines, Poland and Northern Ireland.

[62] Sweden.

[63] See Venice Commission, opinion No. 403/2006 on judicial appointments, para. 23.

[64] See opinion No. 10 of the Consultative Council of European Judges, para. 19.

[65] See, for example, Venice Commission, opinion No. 779/2014 on the seven amendments to the Constitution of "the former Yugoslav Republic of Macedonia" concerning, in particular, the Judicial

69. In the majority of countries that responded to the questionnaire, judicial councils have a mixed composition of judges and non-judges. In some countries, they are composed exclusively of judges.[66]

Judge members

70. In the vast majority of States that responded to the questionnaire, judges constitute the majority of members of the judicial council; only in a few cases, do they constitute a minority of the council members.[67]

71. There is no consensus at the international level as to which levels of the judiciary should be represented in a judicial council. Earlier legal standards recommended that judge members be selected from the higher ranks of the judiciary,[68] whereas more recent instruments advocate for the selection of judges "from all levels of the judiciary and with respect for pluralism within the judiciary".[69] In practice, in many countries, high-level judges constitute the majority of the judge members of the judicial council.[70]

Non-judge members

72. As regards the non-judge members of judicial councils, regional instruments provide that they may comprise members of the legal profession, including law professors, eminent jurists and members of the Bar, and citizens of acknowledged reputation and experience. In order to protect the judiciary from external interference, a number of regional instruments expressly provide that lay members of judicial councils cannot be active politicians or members of parliament, the Government or the administration.

73. The Special Rapporteur considers that the participation of members who are not part of the judiciary can provide added value to the work of judicial councils, and may be justified by the need to avoid the risks of "corporatism" and to facilitate democratic oversight of the quality and impartiality of justice. Given the trend to judicialize broad social areas, the Special Rapporteur also considers that it would be appropriate to include professionals from areas other than law (e.g. experts in management, finances or social sciences) in the membership of councils.

74. The State practice concerning lay members of judicial councils is extremely varied. In the vast majority of countries that responded to the questionnaire, judicial councils include lay members chosen among law professors, eminent jurists, members of the legal profession, and citizens of acknowledged status. In some countries, the Head of State or President of the Republic[71] and members of the Government, usually the Minister of Justice,[72] and of parliament[73] participate in the work of the council, usually ex officio.

Selection methods

75. The Special Rapporteur considers it essential that members of a judicial council, whether judges or not, be selected on the basis of their competence, experience, understanding of judicial life, capacity for discussion and culture of independence, on the basis of an objective, fair and transparent process in which "the judiciary and other parties directly linked with the justice system must have a substantial say with respect to selecting

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Council, the competence of the Constitutional Court and special financial zones, 13 October 2014, para. 76.

66 Bahrain, Hungary and Oman.

67 Andorra, Norway, Philippines and Portugal.

68 See, for example, the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, principle 15.

69 See Council of Europe Committee of Ministers, recommendation CM/Rec(2010)12, para. 27. See also opinion No. 10 of the Consultative Council of European Judges, para. 27; and the Kyiv Recommendations on Judicial Independence, para. 7.

70 E.g. Japan and Mexico.

71 Italy.

72 Côte d'Ivoire, Mauritania, Montenegro, Nepal, Serbia and Turkey.

73 Croatia, Montenegro and Serbia.

and appointing the members of such a body" (see A/HRC/11/41, para. 29). The application of these criteria seeks to avoid, as far as possible, the politicization of judicial councils, as political control of these institutions would ultimately lead towards the opposite effect to that intended — namely, a deterioration of judicial independence. Selection and appointment methods must prevent factual powers and networks with particular and/or hidden agendas from controlling or influencing the decision-making process, guaranteeing full transparency so as to generate awareness of this risk.

76. The selection of judge members of judicial councils can be done through elections or, for a limited number of members (such as the President of the Supreme Court or court of appeal), ex officio. It is for the State authorities to develop appropriate selection procedures guaranteeing the widest representation of the judiciary at all levels. In order to insulate judicial councils from external interference, politicization and undue pressure, international standards discourage the involvement of political authorities, such as parliament, or the executive at any stage of the selection process. The interference of the judicial hierarchies in the process should also be avoided.

77. The responses to the questionnaire show that States have developed different procedures for the selection of judge members of judicial councils. In most cases, judge members are elected by their peers. However, in some countries, judge members are elected by the President of the Republic[74] or the legislative[75] or executive branch.[76]

78. Regional instruments provide limited guidance with regard to the selection of non-judge members. This is a matter that has largely been left to the discretion of States, which have to strike a fair balance between the need to insulate the judiciary from external pressure and the need to avoid the negative effects of corporatism within the judiciary.[77] As a general rule, non-judge members should not be appointed by the executive branch; it is also preferable that they are not appointed by the legislative branch. If elected by parliament, regional standards provide that non-judge members should be elected by a qualified majority, necessitating significant opposition support.[78]

79. The responses to the questionnaire show that, in many countries, the appointment of non-judge members is carried out by the legislative bodies,[79] often by a qualified majority. In other countries, lay members are formally elected by the Head of State[80] or by the executive branch.[81] In some countries, for example in Peru, non-judge members are elected by non-political authorities, such as the Bar Association, professional associations and universities.

Chair of a judicial council

80. With regard to the selection of the Chair of a judicial council, both the Consultative Council of European Judges and the Venice Commission recommend that he or she be an impartial person who is not close to political parties.[82] In parliamentary systems in which the President or Head of State has only formal powers, it is considered permissible to appoint the Head of State as the Chair of the council. However, there are different approaches as regards the selection of the Chair in other systems, such as semi-presidential systems. In general terms, the Consultative Council of European Judges recommends that the Chair should be elected by the council itself and should be a judge, whereas the Venice

[74] Turkey.
[75] Poland and Serbia.
[76] Denmark and Sweden.
[77] See Venice Commission, opinion No. 403/2006 on judicial appointments, para. 27.
[78] See opinion No. 10 of the Consultative Council of European Judges, para. 32; and Venice Commission, opinion No. 403/2006 on judicial appointments, para. 32.
[79] E.g. Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Italy, Mauritania, Montenegro, Portugal, Serbia, Slovakia (three members), Slovenia, Sweden and Turkey.
[80] Algeria, Georgia (one member), Portugal (two members), Slovakia (three members) and Togo.
[81] Denmark, Estonia and Slovakia (three members).
[82] See opinion No. 10 of the Consultative Council of European Judges, para. 33; and Venice Commission, opinion No. 403/2006 on judicial appointments, para. 35.

Commission considers that, in order to avoid possible corporatist tendencies within the council, it would be preferable for the Chair to be elected among the non-judicial members of the council. In a number of mission reports, the Special Rapporteur recommended that the presidency of the council should be exercised by one of its judge members (see, for example, A/HRC/23/43/Add.1, para. 113 (a)). Both the Special Rapporteur and the Inter-American Commission on Human Rights have expressed the view that the Chief Justice or President of the Supreme Court should not be appointed as the Chair of a judicial council (see, for example, A/HRC/17/30/Add.3, para. 94 (i)).[83]

81. The responses to the questionnaire show that State practice relating to the appointment of the Chair of a judicial council is extremely heterogeneous. In some parliamentary systems, the President of the Republic or the Head of State is Chair of the council.[84] In another group of countries, the Chair is appointed by the council itself among its members.[85] In some cases, the Minister of Justice is Chair,[86] often with no right to vote; whereas in others, legislation expressly provides that the Minister cannot be elected as president of the council.[87] In some countries, the Chief Justice or President of the Supreme Court is also the Chair of the council, and holds both positions simultaneously.[88]

82. There are no established principles in regional mechanisms concerning the number of members of judicial councils and the duration of their mandates. These matters are left to the discretion of States, which should define the number of councillors and the duration of their mandates taking into account, inter alia, the size of their judicial systems and, consequently, the number of tasks to be carried out. Similarly, it is up to States to decide whether members of the council should sit as full-time or part-time members.

83. One of the responsibilities of judicial councils is to protect judges from external political influence. In order to guarantee the continuity of a council's functions, its members should not be replaced at the same time or renewed following parliamentary elections. In particular, it would be inconsistent with the principle of the independence of the judiciary to allow for a complete renewal of the composition of a judicial council following parliamentary elections. In his country mission to Poland, the Special Rapporteur expressed the view that the early termination of all the judicial members of the Council would lead to the creation of a new National Council of the Judiciary dominated by political appointees, in breach of existing standards on the independence of the judiciary and the separation of powers (see A/HRC/38/38/Add.1, para. 70).

VII. Conclusions

84. Judicial councils play an essential role in guaranteeing the independence and the autonomy of the judiciary. The underlying rationale for their creation is the need to insulate the judiciary and judicial career processes from external political pressure, mainly from the executive branch. In addition to their primary function of safeguarding judicial independence, a growing number of judicial councils have been entrusted with far-reaching powers to promote the efficiency and quality of justice and rationalize the administration of justice, court management and budgeting.

85. The Special Rapporteur has shown that there is no one-size-fits-all model of judicial council. Each judicial governing body originates from a legal system with distinct historical, cultural and social roots; the specific role of each body varies from one country to the other, in accordance with the specific problems that its establishment is supposed to address. In the present report, the Special Rapporteur has shown that the number of judicial councils has increased greatly in recent decades: current estimates suggest that more than

[83] See also the Inter-American Commission on Human Rights, "Guarantees for the independence of justice operators", para. 246.

[84] Algeria, Italy and Malta.

[85] Montenegro and Slovenia.

[86] Bulgaria and Turkey.

[87] Montenegro.

[88] Denmark, Nepal, Oman, Philippines, Portugal, Togo and Northern Ireland.

70 per cent of the countries in the world have some form of judicial council or equivalent independent and autonomous body. However, this is an area lacking in statistical data at the global level, making it challenging to assess global trends.

86. The Special Rapporteur has also shown that, despite the increase in the number of judicial councils in all regions of the world, there is a lack of international legal standards at the international level specifically devoted to the role, composition and functions of judicial councils. The Basic Principles on the Independence of the Judiciary do not include any provision specifically devoted to judicial councils. The most comprehensive efforts to develop minimum standards relating to the creation, membership and role of judicial councils have been undertaken in Europe, under the aegis of the Council of Europe.

87. The large number of responses to the Special Rapporteur's questionnaire allows general trends and good practices to be identified in relation to the establishment, composition and functions of judicial councils or equivalent independent and autonomous bodies set up at the national level to guarantee the independence of the judiciary.

VIII. Recommendations

88. **In the light of the existing international and regional standards, and based on the contributions received from States and non-State actors, the Special Rapporteur would like to offer the following recommendations relating to the establishment, composition and functions of judicial councils. These recommendations do not purport to identify an ideal model of judicial council, but rather seek to identify common principles for ensuring the independence of such bodies, where they exist, and their effectiveness in the discharge of their functions as guarantors of judicial independence.**

Development of international standards

89. **Given the absence of detailed legal standards at the international level on the role of judicial councils as guarantors of judicial independence, the Special Rapporteur recommends that a comprehensive set of principles be developed under the auspices of the United Nations to identify common principles and good practices in relation to the establishment, composition and functioning of such councils.**

90. **These minimum standards may serve as a useful reference tool for all member States, particularly those that have not yet established a judicial council. Such standards should be developed through an open and transparent process involving not only member States, but also national human rights institutions, civil society, and judges and their representative organizations. Existing international standards relating to judicial councils and the recommendations of international and regional bodies should be taken into account in the development and implementation of this new set of principles.**

Establishment of judicial councils

91. **The Special Rapporteur considers that the establishment of an independent body in charge of protecting and promoting the independence of the judiciary constitutes good practice, and encourages those States that do not have a judicial council or a similar independent institution to consider establishing one, except in those cases in which judicial independence is traditionally ensured by other means.**

92. **In order to guarantee their independence from the executive and legislative branches and ensure effective self-governance for the judiciary, judicial councils should be established under the Constitution in those countries having a written Constitution, or in the equivalent basic law or constitutional instrument in other countries. The Constitution or the equivalent basic law should include detailed provisions regarding the setting-up of such a body and its composition and functions, and guarantee the autonomy of the council vis-à-vis the executive and legislative branches of power.**

93. **Judicial councils should be provided with adequate human and financial resources. In particular, they should have their own premises, a secretariat and a sufficient number of qualified staff to perform their functions independently and autonomously.**

Duties and responsibilities of judicial councils

94. **Judicial councils should be endowed with the widest powers in the field of selection, promotion, training, professional evaluation and discipline of judges. They should have general responsibilities with regard to the administration of the court system and/or the allocation of budgetary resources to the various courts.**

95. **In order to avoid excessive concentration of power in one judicial body and the perception of corporatism, the Special Rapporteur considers it good practice to establish different independent bodies competent for specific aspects of judicial administration (e.g. selection, promotion, training and discipline of judges). The composition of these bodies should reflect the particular task entrusted to them.**

96. **Considering the broad and important functions of judicial councils, they should be held accountable, both institutionally and legally, by society and the appropriate State institutions.**

Selection and appointment of judges

97. **Decisions on the appointment and promotion of judges should be taken through a transparent process by a judicial council or an equivalent body independent of the legislative and executive branches of powers.**

98. **The procedure for the selection and appointment of judges should be based on objective criteria previously established by law or by the competent authority. Decisions concerning the selection and careers of judges should be based on merit, having regard to the qualifications, skills and capacities of the candidates, as well as to their integrity, sense of independence and impartiality. Competitive examinations conducted, at least partly, in a written and anonymous manner can serve as an important tool in the selection process.**

99. **The Special Rapporteur considers that the involvement of the legislative or executive branches of power in judicial appointments may lead to the politicization of judicial appointments. In cases in which judges are formally appointed by the Head of State, the Government or the legislative branch, the appointment should be made on the basis of the recommendation of the judicial council that the relevant appointing authorities follow in practice.**

Court administration and budget control

100. **Without prejudice to the existing responsibilities of the executive and legislative branches of power, the Special Rapporteur is of the view that judicial councils should be entrusted with general responsibilities with regard to the administration of the court system, the preparation of the judicial budget and the allocation of budgetary resources to the various courts.**

Disciplinary proceedings

101. **The responsibility for disciplinary proceedings against judges should be vested in an independent authority composed primarily of judges, such as a judicial council or a court.**

102. **The competence to receive disciplinary complaints and conduct disciplinary investigations and the competence to adjudicate cases of judicial discipline should be vested in separate branches of the judicial council or in different authorities.**

103. **These authorities may include members from outside the judicial profession (lawyers, academics, members of civil society), but in no case should such persons be members of the legislative or executive branches.**

104. **Disciplinary proceedings should provide the accused judges with all the procedural guarantees set out in article 14 of the International Covenant on Civil and Political Rights, including the right to defend themselves in person or with the assistance of a legal counsel of their choice.**

105. **Decisions of the disciplinary body should be reasoned and subject to appeal before a competent court.**

Composition of judicial councils and selection of their members

106. **All the appointment processes for the councils should be transparent and participative so to avoid and prevent corporatism and appropriation of the process by the de facto powers.**

107. **Judicial councils should include judges among its members. To avoid the risk of corporatism and self-interest, the councils may also include lay members, for example lawyers, law professors, jurists, Bar members, as well as citizens of acknowledged reputation and experience. Active politicians and members of the legislative or executive branches of power cannot simultaneously serve on a judicial council. The judge members of a council should be elected by their peers following methods guaranteeing the widest representation of the judiciary at all levels. Certain members of a council, for example the President of the Supreme Court, can be selected ex officio.**

108. **The election of lay members of a council should be entrusted to non-political authorities. When elected by parliament, lay members should be elected by a qualified majority, necessitating significant opposition support. In no case should they be selected or appointed by the executive branch.**

109. **The selection and appointment of the members of a judicial council should take place in an open and transparent way in order to eliminate the risks of political interference and appropriation of the process by the de facto powers, and prevent allegations of corporatism.**

110. **States should enact appropriate measures to ensure a gender perspective in the composition of a council and promote gender parity within judicial bodies, in particular, through a reduction in gender-based barriers to promotion and career advancement that persist within the justice sector.**

111. **When members of the executive branch, for example the Minister of Justice, participate in the work of a council as ex officio members, appropriate measures should be developed to ensure their independence from any potential interference.**

112. **The Chair of a council should be held by an impartial person who does not have any political affiliation. In parliamentary systems in which the President or Head of State has only formal powers, it is permissible to appoint him or her as the Chair of the council. In all other cases, the Chair should be elected by the council itself among its judge members. Neither the Chief Justice, the President of the Supreme Court nor the Minister of Justice should be appointed as the Chair of a judicial council.**

Annex

List of respondents

States

Argentina

Algeria

Andorra

Armenia

Australia

Azerbaijan

Bahrain

Belgium

Bolivia (Plurinational State of)

Bosnia and Herzegovina

Bulgaria

Colombia

Côte d'Ivoire

Croatia

Czechia

Denmark

El Salvador

Estonia

Georgia

Germany

Greece

Honduras

Hungary

Ireland

Italy

Lithuania

Malta

Mauritania

Mauritius

Montenegro

Morocco

Norway

Oman

Paraguay

Poland

Portugal

Republic of Korea

Russian Federation

Senegal

Serbia

Slovenia

Spain

Sweden

Switzerland

Togo

Tunisia

Turkey

United Kingdom of Great Britain and Northern Ireland (Northern Ireland and Scotland)

Uzbekistan

National human rights institutions

Institution of Human Rights Ombudsman (Bosnia and Herzegovina)

Ombudsman's Office (Costa Rica)

Danish Institute for Human Rights

Public Defender's Office (Georgia)

National Commission for Human Rights (Greece)

National Human Rights Commission (India)

National Centre for Human Rights (Jordan)

Ombudsman (Latvia)

Independent National Commission on Human Rights (Liberia)

National Human Rights Commission (Mexico)

National Human Rights Commission (Nepal)

Commission on Human Rights (Philippines)

Commissioner for Human Rights (Poland)

Ombudsman (Portugal)

Slovak National Centre for Human Rights

National Human Rights Commission (Togo)

Civil society organizations

Association of Judges (Armenia)

Association of Magistrates (Plurinational State of Bolivia)

Association of Judges (Croatia)

Association of Judges (Japan)

Association of Judges (Norway)

Association of Magistrates and Judges (Panama)

Association of Judicial Magistrates (Paraguay)

Association of Judges (Serbia)

European Networks of Councils for the Judiciary

International Commission of Jurists

Intergovernmental organizations

Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe

European Commission for Democracy through Law (Venice Commission)